

EXHIBIT 9

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division
In Admiralty**

In the Matter of COEYMANS MARINE TOWING, LLC D/B/A CARVER MARINE TOWING as Owner and Operator of MiT Mackenzie Rose, (IMO No. 8968765) her cargo, engines, boilers, tackle, equipment, apparel, and appurtenances, etc., *in rem*, ("M/T MACKENZIE ROSE"), petitioning for Exoneration from or Limitation of Liability in allision with Norfolk and Portsmouth Belt Line Railroad Company Main Line Railroad Bridge (the "Bridge") occurring June 15, 2024 in and

Civil Action No: 2:24-cv-00490

Declaration of Josef Malik

I, Josef Malik declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in Illinois. I am Chief Legal Counsel for Carver International, which includes petitioner Coeymans Marine Towing LLC d/b/a/ Carver Marine Towing ("Carver"), as owner and operator of M/T Mackenzie Rose, in the above-entitled action. Carver acquired the Mackenzie Rose in 2020.
2. I am familiar with the discovery conducted in this case, including the First and Second Requests for Production of documents served upon Carver by the Norfolk and Portsmouth Belt Line railroad Company ("Belt Line or NPBL").
3. Per the Court's Order (Doc. 50) Carver was to produce documents responsive to numbers 4, 16, 17, 20, 21, 22, 33, 34 of the Belt Line's First Request for Production.
4. Per the Court's Order (Doc. 50) Carver was to produce documents responsive to numbers 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14 of the Belt Line's Second Request for Production.
5. I have overseen and participated in the process of gathering, reviewing, and producing responsive documents and electronically stored information for Carver's response to the Belt Line's First and Second Requests for Production.
6. The search for responsive documents referenced in Paragraph 5, above, included a review of all relevant custodians and data sources in order to fully respond to the First and Second Requests for Production. In that regard, Carver obtained documents from three sources of data: (1) Carver's own records; (2) Documents from

its Vendor, TBS as to data in Helm CONNECT, and (3) performed searches of its company email accounts as follows:

A. From its own documents and based on limited searches in Helm CONNECT, Carver produced documents responsive to the Belt Line's First and Second Requests for Production, as documented therein. The documents produced from Carver's own files are Bates numbered with the prefix "CARVER 000001-001928".

B. Carver uses Helm CONNECT, an electronic record keeping platform to assist in its marine operations. See <https://www.helmoperations.com>. Helm CONNECT stores data pertaining to safety, maintenance, scheduling certifications, crew tasks, certified Safety Management Systems (SMS) compliance training. *Id.* TBS Safety provides assistance with the Helm CONNECT data system. See <https://tbssafety.com>. TBS assisted with culling data requested in the First and Second Requests for production that was stored in the Helm CONNECT database. From Helm CONNECT, TBS provided documents on Carver's behalf which are responsive to the Belt Line's First and Second Requests for Production, as documented therein. The documents produced by TBS from the Helm CONNECT database are Bates numbered with the prefix "CARVER TBS HELM CONNECT 000001-1618".

C. From Carver's company email accounts, Carver provided email from those that had company email accounts, which were responsive to request number 34 of the Belt Line's First Request for Production. See search terms and parameters performed by Carver's IT Department on the attached Addendum A. The documents produced by Carver from its company email accounts are Bates numbered with the prefix "CARVER ESI 000001-001867".

7. In light of the Court's Order (Doc 50.) and the searches conducted above, the following responses to the **First Request for Production** are complete and there are no additional documents: 20, 21, 22, 33.

8. In addition, the following responses to the **Second Request for Production** are complete and there are no additional documents: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14.

9. Carver is searching but has not yet located documents responsive to the following requests:

A. Rosepoint data from June 10-14, 2024 and June 16 – 20, 2024 responsive to Request nos. 4 and 17 of the Belt Line's First Request for Production.

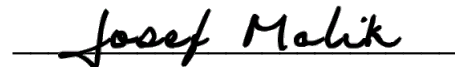
B. Cell phone data from two (2) company-issued cell phones Responsive to Request Nos. 30 and 34 of the Belt Line's First Request for Production. Only Leonard Baldassare, now a former employee, had a company-owned cell phone provided by Carver and the Mackenzie Rose was also equipped with a company-issued cell phone.

C. Engine room logs, responsive to request no. 16 of the Belt Line's First Request for Production

10. To the best of my knowledge, information, and belief, formed after a reasonable inquiry, the production of documents identified by Carver (as referenced in paragraphs 7 and 8 above) in response to its First Supplemental Response to the Belt Line's First Requests for Production and Fifth Supplemental Response to the Belt Line's Second Requests for Production above, are complete and correct as of the date of this declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 9th of June 2025, Chicago, Illinois.

A handwritten signature in black ink, reading "Josef Malik", is written over a horizontal line.

Josef Malik

Under penalties provided by law pursuant to 28 U.S.C. § 1746, I, Josef Malik, certify that the statements set forth in this Affidavit are true and correct, except as to matters therein stated to be on information and belief, and as to such matters I certify that I verily believe the same to be true.

ADDENDUM A

EMAIL ESI SEARCH

Custodians

- bmoore@carvercompanies.com
- lbaldassare@carvercompanies.com
- cmiller@carvercompanies.com (Capt Chris Miller – check this is correct Carver email)
- Crew members with a Carver Email Address
- tugmackenzie@carvercompanies.com

Date Range

- June 1, 2024 to September 15, 2024

Terms

- john.r.crow@uscg.mil
- meghan.e.palomba@uscg.mil
- luke.wisniewski@ntsb.gov
- cabel@wilsav.com
- collin@tbssafety.com
- pat@tbssafety.com
- “Mackenzie rose” AND bridge
- “mack rose” AND bridge
- Mackenzie AND rose AND bridge
- “m/v MACKENZIE ROSE” AND repair
- “Main Line Bridge”
- “Elizabeth River”
- “Norfolk & portsmith Belt Line Railroad Company”
- “Belt Line” AND bridge
- “MACKENZIE ROSE” and “deck log”
- “mackenzie rose” AND “engine log”
- Mackenzie AND ROSE AND “ENGINE LOG”
- Mackenzie AND ROSE AND “Deck Log”
- “2692”
- “CG-2692”
- Allide! AND bridge
- Allision AND bridge
- “Safety Management System”
- “Health and Safety Plan”
- “autopilot”
- Auto AND pilot
- “HARD OVER”
- “incident report”
- “incident statement”
- “Mackenzie rose” AND incident
- “crew” AND “statement”

- **“TBS”**
- **“Tug and barge solutions”**
- **“coast guard” AND “investigation”**
- **“USCG” AND “investigation”**
- **Bridge AND damage**
- **Bridge AND PHOTO!**
- **“June 15, 2024” AND incident**
- **“6/15” AND incident**
- **“6/15/24” AND incident**
- **“6-15-24” AND incident**
- **“Mackenzie rose” AND “mackay”**
- **“Mackenzie rose” AND “GMT”**
- **“Mackenzie rose” AND “AYERS”**
- **“MACKAY”**
- **“gmt”**
- **“AYERS”**
- **“Morrissey” AND “terminate”**
- **“Morrissey” AND “suspend”**